

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**DWIGHT HOWARD**

**PLAINTIFF**

**v.**

**No. 3:14CV272-NBB-JMV**

**MS. MCCARTHY, ET AL.**

**DEFENDANTS**

**MEMORANDUM OPINION**

This matter comes before the court on the *pro se* prisoner complaint of Dwight Howard who challenges the conditions of his confinement under 42 U.S.C. § 1983. For the purposes of the Prison Litigation Reform Act, the court notes that the plaintiff was incarcerated when he filed this suit. For the reasons set forth below, the instant case will be dismissed for failure to state a claim upon which relief could be granted.

**Factual Allegations**

On October 9, 2014, plaintiff Dwight Howard entered the hallway for pill call at 4:35; there was only one other person in the hall for pill call. Howard asked Officer Cochran if he could get some cleaning chemicals, which he wanted for cleaning the bathroom. She responded, “No you can’t get no damn chemicals.” After some back and forth, Cochran issued a Rule Violation Report to Howard for Disruptive Behavior or Disorderly Conduct which Threatens the Orderly Running of the Facility. Cochran claimed that Howard tried to get the cleaning chemicals, anyway, then called her “bitches and hoes.” According to the First Step Response Form regarding the Rule Violation Report, Howard was found guilty of the rule violation based upon officer statements, and he did not present any evidence or witnesses to rebut the statements. When given the chance at the disciplinary hearing on the matter, Howard did not contest the allegations in Rule Violation Report. Howard would like the Rule Violation Report expunged from his record and to receive compensatory damages.

### **Due Process**

Under the Fifth Amendment to the United States Constitution, before the government may deprive a person of life, liberty, or property, that person must receive notice of the government's intent – and a meaningful opportunity to be heard on the matter. *Fuentes v. Shevin*, 407 U.S. 67 (1972). In this case, Howard received notice of a hearing regarding the allegations in Rule Violation Report; however, he chose not to participate in the hearing. As such, he has received all the process he was due. Having chosen not to contest Officer Cochran's statements at the hearing, Howard has waived the opportunity to challenge them in this court. For these reasons, the instant case will be dismissed for failure to state a claim upon which relief could be granted, counting as a "strike" under 28 U.S.C. § 1915(g).

**SO ORDERED**, this, the 3rd day of February, 2015.

/s/ Neal Biggers

NEAL B. BIGGERS, JR.

SENIOR U. S. DISTRICT JUDGE